DETAILED ACTION

This action is issued in response to amendment filed 3/25/2010.

Claims 1-28, 34-35, 46, 51, 59-66, and 68, were canceled. Claims 29-33, 36-45, 47-50, 52-58, 67, and 69-76 were previously amended. No Claims were added.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 76, the word "means" is preceded by the word(s) "for" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). In order to overcome the rejection, Applicant is required to identify the type of means used in claim 76.

Amendment filed 3/25/2010 did not overcome the rejection therefore the rejection is maintained and finalized.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29-33, 36-43, 76, and 69-76, are rejected under 35 U.S.C. 102(e) as being anticipated by Mayaud (U.S. Patent 5,845,255).

Claim 29: FIG. 7 of Mayaud discloses a computer-implemented method for presenting records to a user comprising a user interface which receives input from a user in the form of a medical condition to evaluate records (medications) for prescription to a patient based on the data received from the user input device. In the case of FIG. 7, the user input is the condition "PUD/Gastritis". Subsets of records (suggested medications) are then automatically created based upon the classification of information (formulary/non-formulary drugs) and the user input ("PUD/Gastritis").

As described at col. 39, lines 43-54, the system allows determination of economic parameters (cost of a drug) and allows physician to select a drug or block of drugs based on cost.

As described at col. 39, lines 55-67, the initially selected drug can be evaluated in accordance with the patient's history record. That record includes a listing of drug allergies (col. 19, lines 28-30). Drug allergies are a statistical risk associate with a record of a drug in a database.

The resulting output is shown in FIG. 11, and will include a drug or drug that has been automatically (by computer) optimized for both the risk to the patient and the economic cost.

This is considered to be an automatic optimization since it is performed by the assistance of a computer program, and a joint optimization since it considers two separate variables.

Claim 30: The user input ("PUD/Gastritis") is health information.

Claim 31: Col. 19, lines 28-30 call for the input of patient allergies, which reads as an input of data pertaining to risk tolerance.

Claim 32: FIG. 7 is a user interface.

Claim 33: The economic parameters which are considered (col. 39, lines 44-54) pertain to cost.

Claim 36: In FIG. 7, the user can input a preference, such as a preference for formulary or non-formulary medications.

Claim 37: The user feedback is a selection of a drug for a patient. If the user receives warnings about that drug (col. 40, lines 1-19), the drug selection can be cancelled and another drug selection made.

Claim 38: Col. 39, lines 44-54 outline a plurality of different optimization procedures which can be followed.

Claim 39: Col. 9, lines 44-45 call for the creation of an electronic prescription which is transmitted electronically to a pharmacy. This inherently leads to the transaction of a sale of a medication at a pharmacy.

Claim 40: The transmission of the electronic prescription is a transmission between a server (206) and a client computer at a pharmacy.

Claim 41: The system of Mayaud utilizes the Internet (col. 48, line 2).

Claim 42: The system of Mayaud is implemented by a network of computer systems each containing programmed instructions for controlling the respective computers.

Claim 43: FIG. 7 is a graphic user interface.

Claim 59: See remarks for claim 29. The "specification" is the indication of disease "PUD/Gastritis" by the user in FIG. 7.

Claim 61" See remarks for claim 38.

Claim 62: Col. 19, line 30 calls for the input of a relevance profile (allergic reaction information).

Claim 63" See remarks for claim 39.

Claim 64: See remarks for claim 41.

Claim 65" See remarks for claim 42.

Claim 66: See remarks for claim 43.

Claim 74: Col. 39, line 50 illustrates that the economic parameters are dictated by an external third party (benefit Management Company).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 44-45, 47-50, 52-58 rejected under 35 U.S.C. 103(a) as being unpatentable over Mayaud (U.S. Patent 5,845,255) in view of Kim et al. (Kim hereinafter) US Patent No. 5.866.428.

Claim 44: Mayaud discloses a method for presenting records to a user, comprising:

determining a set of records related to nutritional supplementation from an electronic database based on a classification of the information therewithin and the user health parameter; determining a statistical risk relating to the set of records and the determined user health parameter Col. 22, lines 11-18; determining economic parameters for defined records Col. 39, lines 43-54; and optimized based on both the determined economic parameter and the determined statistical risk Col. 21, 1-8. Mayaud discloses all the limitations as stated above. However, Mayaud is silent with respect to the determining a set of records related to nutritional supplementation from an electronic database based on a classification of the information therewithin and the user health parameter. On the other hand Kim Col. 1, lines 28-42 discloses the determining a set of records related to nutritional supplementation from an electronic database based on a classification of the information therewithin and the user health parameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made. Skilled artisan would have been motivated to incorporates the Kim's teaching in the Mayaud's system to improve patient diagnostics and prescribe the proper medication along with the proper supplemental.

Claim 45: See remarks for claim 30.

Claim 47: See remarks for claim 41.

Claim 48: See remarks for claim 33.

Claim 49: Col. 40, lines 1-10 discuss the presentation of drugs, as well as choices of alternative drugs that can be presented to the user. These choices are presented based upon the user input of risks (allergies/interactions) and economic parameters (cost).

Claim 50: The input of a disease by a user, such as "PUD/Gastritis" pertains a population grouping, since a population of patients can have this disease.

Claim 52: See remarks for claim 37.

Claim 53" See remarks for claim 38.

Claim 54: See remarks for claim 39.

Claim 55" See remarks for claim 40.

Claim 56: See remarks for claim 41.

Claim 57: See remarks for claim 42.

Claim 58: See remarks for claim 43.

Response to Arguments

Applicant's arguments filed 3/25/2010 have been fully considered but they are not persuasive.

Applicant argues that Mayaud does not disclose an automatic joint optimization of parameter because prices data is presented before drug selection by the physician.

Examiner maintains that Mayaud does have this feature. In particular, col. 39, lines 43-54 describe drug cost as an economic parameter that is first considered. Then, in col. 39, lines

55-67, the patient's history is considered. Since the patient's history includes a statistical risk (risk of allergy), this becomes the statistical risk parameter in the optimization process. The system then makes a drug selection upon consideration of all the input parameters, not just one parameter. Thus the optimization is jointly based upon all of the input parameters, not just one single parameter. The optimization is automatic by reason that it is performed with the assistance of a computer program. Further more since the claim language does not discloses any thing about the (before or after the drug selection). Applicant argument could be valid if the claims clearly discloses the drug selection is taking place before or after as argued.

Applicant argues the Mayaud doesn't disclose "Drug allergies are a statistical risk associates with a record of a drug in the database".

Examiner disagrees. Col. 20, lines 32-40, Mayaud disclose the patient drug-related allergies newly reported drug reactions and allergies correspond to the argued limitation.

Applicant argues the Mayaud discloses the drug selection is done by the physician and not some automated system.

Examiner disagrees. Mayaud discloses at Col. 21, lines 22-64, clearly discloses the teaching of entering the patient information, conditions and other data the system as disclosed in line 42-51 clearly discloses a review completed by the system which is an automated method to evaluated the patient condition and the relationship between the problem and prescription, and the system provide a very attractive treatment evaluation tool to the physician in regard to a patient, in other words the evaluation and drug recommendation and selection is an automated process, therefore the examiner believe the claim limitation has been met.

Applicant traverses the 35 USC § 112, 6th paragraph rejection with respect to claim 76.

Examiner disagrees. Applicant is required to identify the means used to perform the limitations of claim 76.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sana Al-Hashemi whose telephone number is 571-272-4013. The examiner can normally be reached on 8Am-4:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pierre Vital can be reached on 571-272-4125. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sana Al-Hashemi/
Primary Examiner, Art Unit 2156
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